



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1567-99

3 September 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 1 July 1968 for four years at age 17. The record reflects that you served for nearly eight months without incident. However, during the 22 month period from February 1969 to October 1970 you received four nonjudicial punishments (NJP) and were convicted by a summary court-martial and a special court-martial. Your offenses consisted of six periods of unauthorized absence (UA) totalling about 42 days, two instances of missing movement, breach of the peace, and interfering with the medical treatment of a Sailor. During the foregoing period, you were also counseled on two occasions regarding your deficiencies and frequent involvement with military authorities and warned that failure to take corrective action could result in administrative separation. You were also referred for a psychiatric evaluation, diagnosed with a passive-aggressive personality, and recommended for administrative discharge.

On 18 December 1970 you were notified that you were being considered for administrative discharge by reason of unfitness

due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and that the discharge could be under other than honorable conditions. You declined to consult with counsel and waived your procedural rights. Thereafter, the commanding officer recommended that you be separated with an undesirable discharge by reason of unfitness. A staff judge advocate reviewed the proceedings and found them sufficient in law and fact. The discharge authority directed discharge under other than honorable conditions by reason of unfitness. You were so discharged on 8 January 1971.

On 31 May 1977, you applied to have your discharge upgraded under the Department of Defense Special Discharge Review Program (SDRP). This program permitted Vietnam-era recipients with general and undesirable discharges to apply to the appropriate discharge review board (DRB) for recharacterization of their discharges. On 19 September 1977, your undesirable discharge was upgraded to a general discharge under the provisions of the SDRP.

The institution of the SDRP met with adverse congressional reaction and led to the enactment of Public Law 95-126, which precluded veterans benefits for any veteran who had a less than honorable discharge upgraded under the SDRP. In addition, future veterans benefits were not permitted unless an upgrade was by a DRB, on a case-by-case basis, using uniform standards which were historically consistent with the criteria for determining service. Therefore, any undesirable discharge upgraded by the SDRP had to be "re-reviewed" under uniform standards to determine whether it would have been upgraded under a regular DRB review. If not, the veteran kept the upgraded discharge, but was not eligible for veterans benefits unless the Veterans Administration (VA) determined that the veterans were otherwise eligible.

On 31 March 1978, the NDRB reviewed your discharge as required by PL 95-126. The NDRB determined that you did not qualify for upgrading under uniform standards. However, the character of discharge that you received from the SDRP was not changed. Your record indicated that you were advised by letter on 31 May 1978 that the NDRB had not affirmed your discharge and that if you did not request a personal appearance hearing before the NDRB, your case would be finalized by 8 October 1978. You were also advised that you might be ineligible for VA benefits.

On 5 January 1983, the NDRB reviewed your case again and concluded that your record of service fully warranted a characterization of under other than honorable conditions and there was nothing in your record which would justify any greater relief than that granted by the SDRP.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, limited education, and the fact that it has been more than 21 years since you were discharged. The Board noted the issues you presented to the NDRB in January 1983 and your contentions to the effect that African-Americans experienced a lot of problems in the Marine Corps during the 1960's, you were beaten up by other Marines because of your youth, you spent 10 days in a VA hospital subsequent to your discharge because you were so messed up from the service because of your problems, and the general discharge issued under the SDRP was unjustly reversed. The Board also noted the VA hospital summary submitted in support of your application which diagnoses you with a passive-aggressive personality and states that the hospitalization was probably service-connected.

The Board concluded that the foregoing factors and contentions were insufficient to warrant further favorable action given your record of four NJPs and convictions by a summary court-martial and a special court-martial. In this regard, the Board noted that many individuals, as in your case, received upgraded discharges under the lenient criteria of the SDRP. However, when the more rigid uniform standards were applied, the NDRB determined that your record would not qualify for an upgrade. However, your general discharge was not changed back to an undesirable discharge as you allege.

The hospital summary you submitted shows you were diagnosed with a passive-aggressive personality, as was diagnosed while you were on active duty. Your hospitalization apparently was considered service-connected since it was within such a relatively short period after your discharge. However, the summary contains no information relevant to the reason for your discharge and provides no valid basis for corrective action. Your other contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board concluded that you were guilty of too much misconduct to warrant affirming the general discharge issued under the SDRP. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director